

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

June 25, 2002

IN RE:

**ADVENTIS, INC., D/B/A INDEPENDENT
SYSTEMS, LLC D/B/A THE BIG LOT**

**DOCKET NO.
02-00485**

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on May 21, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Adventis, Inc., d/b/a Independent Systems, LLC, d/b/a The Big Lot ("Adventis" or the "Company") of violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes, Tenn. Code Ann. § 65-4-401 *et seq.* The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(d) provides that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the

Do-Not-Call Register prior to conducting such telephone solicitations. Tenn. Comp. R. & Reg. 1220-4-11-.04(4) provides that the annual fee to register in the Do-Not-Call Program shall be paid by May 1st of each year and “shall cover the time period from the following July 1st through June 30th of the following years or any part thereof.”

Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.¹ “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”² The maximum fine faced by Adventis in this proceeding is eight thousand dollars (\$8,000) arising from the three (3) telephone solicitations and the Company’s failure to re-register in the Do-Not-Call Program.

Adventis registered in the Tennessee Do-Not-Call Program as a telephone solicitor on February 7, 2001.³ On two (2) occasions between April and July, 2001, the CSD provided Adventis with written notice regarding the expiration of its registration in the Do-Not-Call Program on June 30, 2001. Adventis did not re-register in the Do-Not-Call Program in 2001.

The investigation in this docket commenced on March 27, 2002, when the CSD received a complaint alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Independent Systems on March 19,

¹ See (Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

² Tenn. Code Ann. § 65-4-405(f).

³ Adventis registered in the Do-Not-Call Program under the name of Independent Systems, LLC.

2002. The CSD provided Adventis with notice of this complaint on April 2, 2002. The CSD received a second complaint on April 3, 2002, alleging that a person acting on behalf of Independent Systems made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on March 26, 2002. The CSD provided Adventis with notice of this complaint on April 4, 2002. The CSD received the third complaint on April 11, 2002, alleging that a person acting on behalf of Independent Systems made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on March 29, 2002. The CSD provided Adventis with notice of this complaint on April 15, 2002.

The proposed Settlement Agreement was negotiated as the result of the CSD's investigation into the complaints against Adventis. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Adventis is in the business of advertising property, including vehicles, over the Internet. Adventis is located in Roanoke, Virginia and has no satellite offices. It employs less than twenty (20) workers. After receiving notice of the complaints, Adventis immediately contacted the CSD and expressed an interest in resolving this matter. In addition, Adventis re-registered with the TRA as a telephone solicitor on April 15, 2002 and has paid its registration fees through June 30, 2003. CSD has received no additional

complaints from Tennessee consumers arising after Adventis received notice of the violations on April 2, 2002.

As a part of this Settlement Agreement, Adventis agrees to implement measures, as outlined in Exhibit A, to prevent similar occurrences in the future. In addition, Adventis will pay five thousand dollars (\$5,000.00) in settlement of these complaints and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Executive Secretary of the TRA no later than thirty (30) days from the date the Directors of the TRA approve this Settlement Agreement. The remaining three (3) installments of one (1) thousand dollars (\$1,000.00) each shall be remitted to the TRA no later than the first business day of each month for the next three (3) consecutive months. Upon payment of the amount of five thousand dollars (\$5,000.00) in compliance with the terms and conditions of this Settlement Agreement, Adventis is excused from further proceedings in this matter.

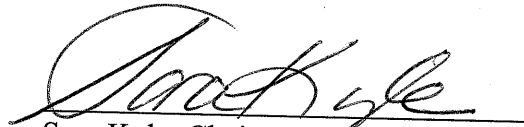
A representative of Adventis participated telephonically during the Authority Conference on May 21, 2002. Following a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

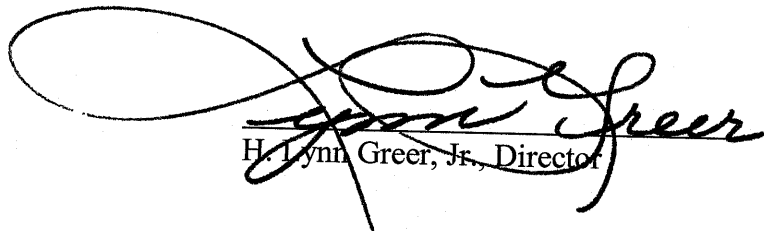
IT IS THEREFORE ORDERED THAT:

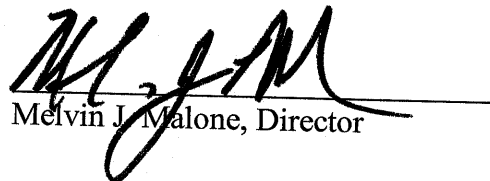
1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. The amount of five thousand dollars (\$5,000) shall be paid by Adventis into the Public Utilities Account of the TRA. Adventis shall remit the amount of two thousand dollars (\$2,000.00) to the Office of the Executive Secretary of the TRA no later than thirty (30) days from the date the Directors of the TRA approve this Settlement Agreement. The

remaining three (3) installments of one thousand dollars (\$1,000.00) each shall be paid to the TRA no later than the first business day of each month for the next two (2) consecutive months.

3. Upon payment of the amount of five thousand dollars (\$5,000), Adventis is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Adventis to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

ADVENTIS, INC., D/B/A INDEPENDENT
SYSTEMS D/B/A/ THE BIG LOT!

DOCKET NO. 02-00485

DO-NOT-CALL T02-00196
PROGRAM T02-00198
FILE NUMBERS T02-00220

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Adventis, Inc. d/b/a Independent Systems d/b/a The Big Lot! ("Adventis" or the "Company"). This Settlement Agreement pertains to three (3) complaints received by the CSD alleging that Adventis violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. § 65-4-401, *et seq.*, and TENN. COMP. R. & REGS. 1220-4-11.07, and is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the

EXHIBIT

A

TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations. Tenn. Comp. R. & Reg. 1220-4-11-.04(4) provides that the annual fee to register in the Do-Not-Call Program shall be paid by May 1st of each year and "shall cover the time period from the following July 1st through June 30th of the following years or any part thereof."

Adventis registered in the Tennessee Do-Not-Call Program as a telephone solicitor on February 7, 2001.¹ On two (2) separate occasions between April and July 2001, the CSD provided Adventis with written notice via email regarding the expiration of its registration in the Do-Not-Call Program on June 30, 2001. Adventis did not re-register in the Do-Not-Call Program in 2001.

The CSD's investigation in this docket commenced after it received a complaint on March 27, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Independent Systems on March 19, 2002. The CSD provided Adventis with notice of this complaint on April 2, 2002. The CSD received a second complaint on April 3, 2002, alleging that a person acting on behalf of Independent Systems made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on March 26, 2002. The CSD provided Adventis with notice of this complaint on April 4, 2002. The CSD received the third complaint on April 11,

¹ Adventis registered in the Do-Not-Call Program under the name of Independent Systems, LLC.

2002, alleging that a person acting on behalf of Independent Systems made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on March 29, 2002. The CSD provided Adventis with notice of this complaint on April 15, 2002.²

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Adventis in this proceeding is eight thousand dollars (\$8,000), arising from the three (3) telephone solicitations and the Company's failure to re-register in the Do-Not-Call Program.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violations. Adventis is in the business of advertising property, including pre-owned vehicles, over the Internet. Adventis is located in Roanoke, Virginia and has no satellite offices. It employs less than twenty (20) workers. After receiving notice of the complaints, Adventis immediately contacted the CSD and expressed an interest in resolving this matter. In addition, Adventis re-registered with the TRA as a telephone solicitor on April 15, 2002 and has paid its registration fees through June 30, 2003. CSD has received no additional complaints from Tennessee consumers arising since Adventis received notice of the violations on April 2, 2002.

² All three (3) of the alleged violations occurred before the CSD sent Adventis the first Notice of Violation in this docket on April 2, 2002.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Adventis agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. Adventis neither admits nor denies that the three (3) complaints against it are true and valid complaints and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Since receiving notice of the complaints that are the subject of this Agreement, Adventis has made efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). Adventis contacted CSD and expressed an interest in resolving this matter. In addition, Adventis re-registered with the TRA as a telephone solicitor on April 15, 2002, has paid its registration fees through June 30, 2003 and receives a monthly copy of the Do-Not-Call register.
3. Adventis agrees to pay five thousand dollars (\$5,000.00) in settlement of these complaints and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Executive Secretary of the TRA no later than thirty (30) days from the date the Directors of the TRA approve this Settlement Agreement.³ The remaining three (3) installments of one (1) thousand dollars (\$1,000.00) each shall be remitted to the TRA no later than the first business day of each month for the next three (3) consecutive months. Upon payment of the amount of five thousand dollars (\$5,000.00)

³ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket No. 02-00485.

in compliance with the terms and conditions of this Settlement Agreement, Adventis is excused from further proceedings in this matter.

4. Adventis agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. If any clause, provision or section of this Settlement Agreement is, for any reason, held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
6. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.
7. Adventis agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.

8. In the event that Adventis fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Adventis shall pay any and all costs incurred in enforcing the Settlement Agreement.

Eddie Roberson

Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

5/10/02
Date

Jason Seligman
Signature

JASON SELIGMAN
Print Name

CFO
Print Title

5/10/02
Date